

FILED

SEP 9 2005

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing OfficerBEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the matter of:

EVOLUTION SERVICES, INC.,

Unauthorized entities,

And

WILLIAM J. MILLER, STANTON L. CALL,
WILLIAM R. OWENS, BARBARA MILLER,
JOHN C. RIVERA, JESSE C. RIVERA, LISA
A. COLEMAN, DAVID EMERSON LEE, M.D.,
KENNETH KAISER, SR. and CHRIS
KOMARZEC.

NO. D 05-364

DEMAND FOR HEARING

Evolution Services, Inc. ("EST" or "the Company") and William J. Miller, Stanton L. Call, William R. Owens, Barbara Miller, John C. Rivera, Jesse C. Rivera, Lisa A. Coleman, David Emerson Lee, M.D., Kenneth Kaiser, Sr. and Chris Komarzec ("Individuals") (collectively, the "Respondents") being aggrieved by the acts and threatened acts of the Office of Insurance Commissioner ("OIC") in the entry of its Order to Cease and Desist (the "Order") demanding that the Respondents cease and desist from transacting business in the state of Washington, and in holding out the threat of further legal action and other sanctions in

DEMAND FOR HEARING-1

LAWYERS

RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
(206) 464-4224

1 the event of failure to comply with said Order, hereby demand a hearing in accordance with
2 the provisions of Chapter 48.04 RCW, and Title 34 RCW. The Respondents request that the
3 hearing of this matter be presided over by an administrative law judge or hearing officer
4 assigned under Chapter 34.12 RCW. This Demand for Hearing and request for administrative
5 law judge are made pursuant to RCW 48.04.010.

6 The acts by which the Respondents are aggrieved and the grounds which will be relied
7 on as a basis for relief by the Respondents are set forth as follows:

- 8 1. The OIC alleges that the "Respondents have issued and written insurance and
9 transactive insurance in the state of Washington." These allegations are false.
- 10 2. The OIC further alleges that the "Respondents have not been granted a
11 certificate of authority to act as an insurer or self-funded multiple-employer
12 welfare arrangement in Washington." These allegations appear to be based
13 upon inadequate information and investigation on the part of the OIC and its
14 representatives. Had the OIC properly investigated this matter, the OIC would
15 have learned that the Company does not conduct business as an insurance
16 company, nor does it transact the business of insurance in the state of
17 Washington or any other state. The OIC's allegations are intended to harm the
18 Company in its business and reputation, and therefore, are arbitrary and
19 capricious, and without sufficient foundation as to truth.
- 20 3. The OIC further alleges that certain Individuals are not properly licensed to
21 conduct business as insurance agents in the state of Washington. These
22 allegations are either false or without proper basis and, therefore, are intended
23 only to harm the Individuals in their reputation and business.

24
25
26 DEMAND FOR HEARING-2

L A W Y E R S

RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
(206) 464-4224

- 1 4. The OIC further alleges that the Respondents have engaged in conduct that the
2 OIC asserts is without "economic substance or legitimate business purpose,
3 and are sham transactions designed solely to avoid state insurance laws." The
4 OIC further alleges that "These false and misleading representations were
5 intended to induce Washington residents to purchase the insurance product
6 sold by the Respondents." These allegations made by the OIC are false and
7 without legal or factual support, and are clearly intended only to harm the
8 business and reputation of the Respondents. The acts of the OIC constitute an
9 attempt to defame the Respondents and such acts by the OIC are not only
10 arbitrary and capricious but are also legally and factually groundless and
11 malicious.
- 12 5. The Respondents do not provide insurance as defined under Washington law
13 nor do they solicit insurance within the state of Washington. The OIC's Order
14 with respect to these allegations is without merit and is unsupported in law and
15 in fact.
- 16 6. The OIC's actions in issuing its Order deprived the Respondents of property
17 and other valuable rights, and impair or threatened to impair, the ability of the
18 Respondents to conduct their legitimate business, all without due process of
19 law.
- 20 7. The OIC's actions are, therefore, arbitrary and capricious.
- 21 8. The OIC's actions constitute a finding of fault, statutory violation, and
22 potential legal liability on the part of the Respondents without an adequate
23 hearing before an impartial trier of fact and law. Further, the OIC's actions
24 constitute a real and continued threat to the Respondents in their business by
25

26 DEMAND FOR HEARING-3

L A W Y E R S

RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
(206) 464-4224

1 threatening to take further legal action or impose other sanctions against the
2 Respondents, all without due process of law.

3 9. The Respondents have no adequate remedy absent this Demand for
4 Administrative Hearing and Review.

5 10. The Company is a Utah corporation formed for the purpose of providing
6 pension and welfare benefits, and administrative services to its members. The
7 Company is not a Multiple-Employer Welfare Arrangement ("MEWA").

8 11. The Company is licensed under Utah's Professional Employer Organizations
9 Licensing Act. Utah Insurance Department has determined that the business of
10 the Company does not constitute insurance subject to the jurisdiction of the
11 Utah Insurance Department.

12 12. The Company and its members are under common control and, therefore, the
13 Company may offer single-employer benefit plans to the employees of the
14 members pursuant to federal law, specifically, the Employee Retirement
15 Income Security Act of 1974, as amended ("ERISA").

16 13. The Company's business is governed under the provisions of ERISA and,
17 therefore, the OIC has no authority over the business conducted by the
18 Company.

19 14. Federal law pre-empts state law in this matter. Therefore, the OIC's Order has
20 no effect and is void in accordance with the Pre-emption Doctrine.

21 ///

22 ///

23 ///

24 ///

25

26 DEMAND FOR HEARING.4

L A W Y E R S

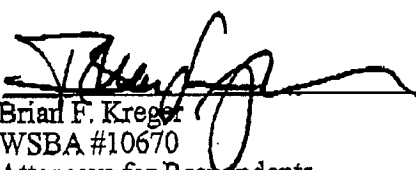
RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
(206) 464-4224

1 WHEREFORE, the Respondents, and each of them, pray that the hearing officer
2 declare and order:

- 3 1. That the Order to Cease and Desist issued by the Officer of Insurance
4 Commissioner in matter number D 05-364 be declared invalid and that the
5 Order be vacated;
6 2. That the Officer of Insurance Commissioner be instructed to refrain from
7 all attempts to exercise regulatory jurisdiction over the Respondents with
8 respect to the conduct of the Company in this state;
9 3. That the Respondents are entitled to such other and further relief as the
10 hearing officer may deem appropriate under the circumstances.

11 DATED this 9th day of September, 2005.

12
13 Evolution Services, Inc.,
14 William J. Miller, Stanton L. Call, William R.
15 Owens, Barbara Miller, John C. Rivera, Jesse C.
16 Rivera, Lisa A. Coleman, David Emerson Lee,
17 M.D., Kenneth Kaiser, Sr. and Chris Komarzec

18 By 
19 Brian F. Kreger
20 WSBA #10670
21 Attorneys for Respondents

22 RYAN, SWANSON & CLEVELAND, PLLC
23 1201 Third Avenue, Suite 3400
24 Seattle, Washington 98101-3034
25 Telephone: (206) 464-4224
26 Facsimile: (206) 583-0359
kreger@ryanlaw.com

428725.01

DEMAND FOR HEARING.5

L A W Y E R S

RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
(206) 464-4224